

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DIANE JACKSON-MUGHAL**

**APPELLANT,**

**v.  
DIVISION OF EMPLOYMENT  
SECURITY**

**RESPONDENT.**

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DOCKET NUMBER WD73818

DATE: December 27, 2011

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Appeal From:

Labor and Industrial Relations Commission

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Appellate Judges:

Division Two: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

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Attorneys:

Dale L. Ingram, Kansas City, MO, for appellant.

Bart A. Matanic, Jefferson City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DIANE JACKSON-MUGHAL,**

**APPELLANT,**

**v.**

**DIVISION OF EMPLOYMENT  
SECURITY,**

**RESPONDENT.**

No. WD73818

Labor and Industrial Relations Commission

Before Division Two: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard, Judge and  
Cynthia L. Martin, Judge

Diane Jackson-Mughal, claimant, appeals from the decision of the Labor and Industrial Relations Commission affirming the dismissal of her appeal to an appeals tribunal due to her failure to appear at a telephone hearing. Claimant contends that the Commission erred because it determined that Claimant was required to appear at the telephone hearing by calling in to a designated number, though the Division of Employment Security's regulations required Claimant to appear by being available to receive a telephone call from the Appeals Tribunal. In the alternative, Claimant contends that her failure to participate in the telephone hearing should have been viewed pursuant to 8 CSR 10-5.030(2)(B) as an election not to participate in the hearing rather than as a failure to appear warranting dismissal of her appeal.

**REVERSED AND REMANDED.**

Division Two holds:

The Division concedes that the notice of hearing that was sent to Claimant did not comply with the Division's regulations. Pursuant to section 288.190.2, the Commission possessed no authority to act beyond or contrary to the Division's regulations in force and effect at the time of Claimant's telephone hearing. Thus, the dismissal of Claimant's appeal in reliance on a definition of "appear" which was inconsistent with the Division's regulations, and which was based on a regulation not yet proposed nor promulgated, exceeded the statutory authority delegated to the Division by the legislature.

Opinion by Cynthia L. Martin, Judge

December 27, 2011

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